

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff)	Case No.
v.)	
)	
LICKING COUNTY, OHIO)	
)	
and)	
)	
the STATE OF OHIO)	
)	
Defendants.)	
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COMPLAINT

Plaintiff, the United States of America ("United States"), by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the United States Environmental Protection Agency ("U.S. EPA"), alleges as follows:

NATURE OF ACTION

1. This is a civil action pursuant to Sections 309(b) and (d) of the Clean Water Act (the "Act"), 33 U.S.C. § 1319(b) and (d), for injunctive relief and civil penalties against Licking County, Ohio for violations of Section 301 and 405 of the Act, 33 U.S.C. §§ 1311 and 1345, and certain terms and conditions of the National Pollutant Discharge Elimination System ("NPDES") permit issued to Licking County pursuant to Section 402 of the Act, 33 U.S.C. § 1342, for its Wastewater Treatment Plant in Buckeye Lake, Ohio, which discharges into the South Fork of the Licking River. The United States also seeks injunctive relief and civil penalties from Licking County for violations of Administrative Order No. V-W-95-AO-04 issued by U.S. EPA on December 12, 1994, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a).

The State of Ohio ("State") has been joined as a party to this action under Section 309(e) of the Act, 33 U.S.C. § 1319(e).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue is proper in the Southern District of Ohio pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395, because Licking County is located in this judicial district and the violations occurred in this district.

4. Notice of the commencement of this action has been given to the State of Ohio as required by Section 309(b) of the Act, 33 U.S.C. § 1319(b).

DEFENDANTS

5. Licking County is a "municipality" as that term is defined in Section 502(4) of the Act, 33 U.S.C. § 1362(4).

6. Licking County and the State of Ohio are both "persons" as defined in Section 502(5) of the Act, 33 U.S.C. § 1362(5).

7. Licking County owns and/or operates a wastewater treatment plant ("the plant" or "Buckeye Lake Sewer District No. 1 Wastewater Treatment Plant") located at 458 Hilton Road, Buckeye Lake, Licking County, Ohio, which treats wastewater for the communities of Buckeye Lake, Harbor Hills, Avondale, and Edgewater Beach in Licking County; Hollywood, Lakeside, West Bank, Liebs Island, South Bank, Shell Beach, Fairfield Beach, and a portion of Custer's Point in Fairfield County; and Custer's Point and Snug Harbor in Perry County.

STATUTORY AND REGULATORY BACKGROUND

8. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into a navigable water, except in compliance with, among other things, the terms and conditions of an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

9. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that U.S. EPA, or an authorized State, may issue NPDES permits for the discharge of pollutants. NPDES permits require that such discharges meet the requirements of the Act or meet such conditions as the Administrator determines are necessary to carry out the provisions of the Act.

10. Section 405(d) of the Act, 33 U.S.C. § 1345(d), requires the Administrator of U.S. EPA to develop regulations providing guidelines for the disposal of sludge and the utilization of sludge for various purposes. The regulations must include uses for sludge, including disposal; specify factors to be taken into account in determining the practices applicable to each use or disposal; and identify concentrations of pollutants which interfere with each such use or disposal.

11. Pursuant to Section 405(d) of the Act, 33 U.S.C. § 1345(d), U.S. EPA promulgated Standards for the Use or Disposal of Sewage Sludge. 58 Fed. Reg. 9387 (February 19, 1993). These standards are codified at 40 C.F.R. Part 503. 40 C.F.R. § 503.2 requires compliance with the standards as expeditiously as practicable, but in no case later than February 19, 1994.

12. Section 405(e) of the Act, 33 U.S.C. § 1345(e), makes it unlawful to dispose of sludge from a Publicly Owned Treatment Works ("POTW") for any use for which regulations have been established except in accordance with those regulations.

13. Section 309(a)(3), (b) and (d) of the Act, 33 U.S.C. § 1319(a)(3), (b) and (d), authorizes the Administrator of U.S. EPA to issue an

administrative order or to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation of Section 301 of the Act, 33 U.S.C. § 1311.

14. Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), and 40 C.F.R. Part 19 provide that any person who violates Section 301 or 405 of the Act, 33 U.S.C. §§ 1319 and 1345, or any Administrative Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), shall be subject to injunctive relief and the assessment of a civil penalty not to exceed \$25,000 per day for each violation that occurred prior to January 31, 1997, \$27,500 per day for each violation that occurred on or after January 31, 1997 through March 15, 2004, and \$32,500 per day for each violation that occurred after March 15, 2004.

15. Pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e), the State of Ohio may be liable for payment of any judgment, or any expenses incurred as a result of complying with any judgment entered against Licking County in this action, but only to the extent that the laws of the State prevent Licking County from raising revenues needed to comply with such judgment.

GENERAL ALLEGATIONS

16. The Licking County plant is a POTW as that term is defined in Section 212(2) of the Act, 33 U.S.C. § 1292(2), and 40 C.F.R. § 403.3(o), and used in Sections 301(b)(1)(B) and (i) of the Act, 33 U.S.C. § 1311(b)(1)(B) and (i).

17. At all times relevant to this Complaint, Licking County "discharged" "pollutants" into the South Fork of the Licking River from Outfall 4PJ00000001 at the plant, within the meaning of Section 502(6) and (12) of the Act, 33 U.S.C. § 1362(6) and (12), and 40 C.F.R. § 122.2.

18. Outfall 4PJ000000001 at the plant is a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

19. The South Fork of the Licking River is a "navigable water" as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7), and is part of the "waters of the United States" within the meaning of 40 C.F.R. § 122.2.

20. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, on March 31, 1992, the Ohio Environmental Protection Agency ("OEPA") issued NPDES Permit No. OH0039898 to Licking County. Thereafter, OEPA modified or renewed Licking County's NPDES permit on the following dates: September 14, 1993 (modified), December 26, 1995 (renewed), June 3, 1996 (modified), and December 10, 2002 (renewed). Exhibit "A" is a true and accurate copy of Licking County's current NPDES permit and is incorporated into this Complaint by reference.

FIRST CLAIM FOR RELIEF

21. Paragraphs 1 through 20, inclusive, are realleged and incorporated herein by reference.

22. From August 1992 through December 2004, on numerous occasions, Licking County discharged one or more of the following pollutants to the South Fork of the Licking River in violation of specific effluent limitations in its NPDES permit: residual chlorine, fecal coliform, mercury, hexavalent dissolved chromium, oil and grease, nitrogen, ammonia, total suspended solids, ph, and copper. Licking County's violations of its NPDES permit effluent limitations are set forth in the "Table of Effluent Limitation Violations" attached to this Complaint as Exhibit "B" and incorporated herein by reference.

23. Licking County's discharge of pollutants in violation of its NPDES permit violates Section 301 of the Act, 33 U.S.C. § 1311.

24. As a result of these violations of the Act, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), Licking County is subject to a civil

penalty not to exceed \$25,000 per day for each violation that occurred prior to January 31, 1997, \$27,500 per day for each violation that occurred on or after January 31, 1997 through March 15, 2004, and \$32,500 per day for each violation that occurred after March 15, 2004.

25. Unless enjoined by Order to this Court, Licking County will continue to violate the Act.

SECOND CLAIM FOR RELIEF

26. Paragraphs 1 through 20, inclusive, are realleged and incorporated herein by reference.

27. From August 1992 through January 2005, on numerous occasions, Licking County discharged pollutants into the South Fork of the Licking River other than as authorized by its NPDES permit, through both unauthorized bypasses and overflows of the County's treatment system. Licking County's unauthorized discharges in violation of its NPDES permit are set forth in the "Table of Outfall 002 Retention Basin Overflows" attached to this Complaint as Exhibit "C" and incorporated herein by reference.

28. Licking County's unauthorized bypasses and/or overflows violate Section 301 of the Act, 33 U.S.C. § 1311.

29. As a result of these violations of the Act, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and 40 C.F.R. Part 19, Licking County is subject to a civil penalty not to exceed \$25,000 per day for each violation that occurred prior to January 31, 1997, \$27,500 per day for each violation that occurred on or after January 31, 1997 through March 15, 2004, and \$32,500 per day for each violation that occurred after March 15, 2004.

30. Unless enjoined by Order of this Court, Licking County will continue to violate the Act.

THIRD CLAIM FOR RELIEF

31. Paragraphs 1 through 20, inclusive, are realleged and incorporated herein by reference.

32. On numerous occasions from August 1992 through April 1997, Licking County failed to monitor its effluent in accordance with the monitoring requirements in its NPDES permit.

33. Licking County's failures to monitor its effluent in accordance with its NPDES permit are set forth in the "Table of Effluent Monitoring Violations at Outfall 001" attached to this Complaint as Exhibit "D" and incorporated herein by reference.

34. Licking County's failure to monitor its effluent in accordance with the monitoring requirements in its NPDES permit violates Section 301 of the Act, 33 U.S.C. § 1311.

35. As a result of these violations of the Act, Licking County is subject to a civil penalty not to exceed \$25,000 per day for each violation of the Act, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d) for each violation that occurred prior to January 31, 1997, and \$27,500 per day for each violation that occurred on or after January 31, 1997 through April, 1997.

FOURTH CLAIM FOR RELIEF

36. Paragraphs 1 through 20, inclusive, are realleged and incorporated herein by reference.

37. From May 1993 through August 1995, Licking County failed to perform test procedures for the analysis of pollutants according to the sampling and analytical requirements in its NPDES permit.

38. Licking County's failure to perform test procedures for the analysis of pollutants in accordance with the sampling and analytical requirements in its NPDES permit violates Section 301 of the Act, 33 U.S.C. § 1311.

39. As a result of these violations of the Act, Licking County is subject to a civil penalty not to exceed \$25,000 per day for each violation of the Act, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d).

FIFTH CLAIM FOR RELIEF

40. Paragraphs 1 through 20, inclusive, are realleged and incorporated herein by reference.

41. From May 1993 through March 1995, Licking County failed to manage or dispose of sludge according to the requirements in its NPDES permit.

42. Licking County's failure to manage and/or dispose of sludge in accordance with the requirements in its NPDES permit violates Section 301 of the Act, 33 U.S.C. § 1311.

43. As a result of these violations of the Act, Licking County is subject to a civil penalty not to exceed \$25,000 per day for each violation of the Act, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d).

SIXTH CLAIM FOR RELIEF

44. Paragraphs 1 through 20, inclusive, are realleged and incorporated herein by reference.

45. On or about December 12, 1994, the U.S. EPA issued Administrative Order No. V-W-95-AO-04 to Licking County, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), requiring, inter alia, that Licking County achieve compliance with its NPDES permit as soon as possible, but no later than May 31, 1995. Exhibit "E" is a true and accurate copy of the Administrative Order and is incorporated into this Complaint by reference.

46. From May 31, 1995, through at least January 2005, Licking County has violated the terms of the Administrative Order.

47. Licking County's violations of the terms of the Administrative Order violate Section 301 of the Act, 33 U.S.C. § 1311.

48. As a result of these violations of the Act, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), Licking County is subject to a civil penalty not to exceed \$25,000 per day for each violation that occurred prior to January 31, 1997, \$27,500 per day for each violation that occurred on or after January 31, 1997 through March 15, 2004, and \$32,500 per day for each violation that occurred after March 15, 2004.

SEVENTH CLAIM FOR RELIEF

49. Paragraphs 1 through 20, inclusive, are realleged and incorporated herein by reference.

50. Section 503.1 of the sludge standards, 40 C.F.R. § 503.1, states that the standards apply to any person who prepares sewage sludge or applies sewage sludge to the land.

51. From December 1995 through December 1996, Licking County "prepared sewage sludge" as those terms are defined at 40 C.F.R. § 503.9(r).

52. From December 1995 through December 1996, Licking County "applied sewage sludge to the land" as those terms are defined at 40 C.F.R. § 503.9(a).

53. Section 503.13(a)(1) of the sludge standards, 40 C.F.R. § 503.13(a)(1), prohibits the application of bulk sewage sludge or sewage sludge sold or given away in a bag or other container to the land if the concentration of any pollutant in the sewage sludge exceeds the ceiling concentration for the pollutant in Table 1 of Section 503.13.

54. The ceiling concentration for molybdenum in Table 1 of Section 503.13 is 75 milligrams per kilogram on a dry weight basis.

55. On at least two occasions from December 1995 through December 1996, Licking County land-applied bulk sewage sludge that exceeded the ceiling concentration for molybdenum in Table 1 of Section 503.13 to the land.

56. Licking County's application of bulk sewage sludge that exceeded the ceiling concentration for molybdenum in Table 1 of Section 503.13 to the land is a violation of 40 C.F.R. § 503.13(a)(1) and Section 405(e) of the Act, 33 U.S.C. § 1345.

57. As a result of these violations of the Act, Licking County is subject to a civil penalty not to exceed \$25,000 per day for each violation of the Act, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d).

EIGHTH CLAIM FOR RELIEF

58. Paragraphs 1 through 20, inclusive, are realleged and incorporated herein by reference.

59. To the extent that any law of the State of Ohio prevents Licking County from raising revenues needed to comply with any judgment entered against Licking County in this action, pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e), the State may be liable for payment of any judgment, or any expenses incurred by Licking County as a result of complying with any judgment.

RELIEF REQUESTED

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court:

- (1) Enjoin Defendant, Licking County, permanently from further violation of the Act;
- (2) Enjoin Defendant, Licking County, permanently from any discharges of pollutants except as expressly authorized by the Act and its NPDES permit;

(3) Order Defendant, Licking County, to undertake and complete expeditiously all actions necessary to upgrade its POTW and ensure that it operates in compliance with all applicable requirements of the Act;

(4) Order Defendant, Licking County, to pay civil penalties not to exceed \$25,000 per day for each day of each violation of the Act that occurred prior to January 31, 1997, \$27,500 per day for each violation that occurred on or after January 31, 1997 through March 15, 2004, and \$32,500 per day for each violation that occurred after March 15, 2004;

(5) Order the State of Ohio to pay any judgment, or any expenses incurred as a result of complying with any judgment, entered against Licking County in this action to the extent that the laws of Ohio prevent Licking County from raising revenues needed to comply with such judgment; and

(6) Grant Plaintiff such other relief as it deems just and proper.

Respectfully submitted,

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